North Dakota Law Review

Volume 13 | Number 10 Article 3

1936

Our Supreme Court Holds

North Dakota State Bar Association

Have the doctrines of one hundred fifty years ago lost their significance today? Rather they are more important now than ever. With the Government constantly exercising more powers in an increasingly complex economic structure; with those powers lodged in the hand of a hydra-headed and irresponsible bureaucracy; with mass emotion playing an increasing and constantly more direct part in the forming of public opinion through the magic of the radio, the propaganda of the movie tone and the boxcar headline; with legislative bodies turning out an increasing mass of ill-considered laws because they are asked to do what is humanly impossible to do well, the need for absolute independence in our judges is far more acute than it was 150 years ago when, in many cases, except for paying taxes, one might live his whole life without coming in contact with the other branches of the Government and so needing the protection of a free court.

OUR SUPREME COURT HOLDS

In Harry Guenther, et al, vs. David Funk, et al, personally and as the Board of Directors of Lowery School District No. 20 in Stutsman County, North Dakota, Arthur Unruh and Emil Guenther, Citizens, Residents and Taxpayers,

That, It is a general rule that, in the absence of a statute extending the right of appeal, no one can appeal from a judgment or order unless he was a party to the action or proceeding in the court in which the judgment or order was entered, unless he is a legal representative of a party, or his privity of estate, title or interest appears from the record.

That where certain persons who are residents and taxpayers in a school district and parents of children of school age, institute a mandamus proceeding to compel the directors of a school district to construct a schoolhouse, which if constructed will be attended by their children, and where such proceeding is brought in the names of such parents and does not purport to be brought by them in a representative capacity, other patrons of a school district who are not parties to the proceeding or the judgment entered therein have no right to appeal from the judgment.

That this is a mandamus proceeding brought by taxpayers and residents of a school district who are the parents of certain children of school age, to compel the Board of Directors of the school district to construct a schoolhouse which, if constructed, will be attended by their children. The proceeding was instituted in the names of such parents for the alleged purpose of enforcing their rights, and does not purport to be brought in behalf of other persons similarly situated. After the proceeding had been had and final judgment had been rendered and entered directing the issue of a peremptory writ of mandamus, certain other taxpaying patrons of the school district made application to have the judgment vacated and upon the judgment being vacated, for leave to intervene.

For reasons stated in the opinion it is held:

(a) That the application was addressed to the sound judicial discretion of the trial court;

(b) That the trial court did not abuse its discretion in denying the application.

Appeal from the District Court of Stutsman County, McFarland, J. In a mandamus proceeding against the directors of a school district to compel them to construct a schoolhouse, certain patrons of the school district, not parties to the proceeding or the judgment entered therein, appeal from the judgment and from an order denying their motion to vacate the judgment, and, upon the judgment being vacated, for leave to intervene.

Appeal from judgment dismissed; and the order denying the motion affirmed.

In Fritz F. Heuer, vs. Anna Heuer Kruse, executrix of the estate of Fritz Heuer, deceased, Peter Heuer, Anna Heuer Kruse, Claus Heuer, John Heuer, Herman Heuer and Julius Heuer.

That where a father agrees with his son that if the latter will move upon a tract of land, establish his home thereon and farm the same, the father will sell the land to him at a stated price payable within ten years, but that such purchase price need not be paid if it is not reasonably convenient for the son to pay and on the death of the father whatever of the agreed price remains unpaid shall be deducted from the son's share of the father's estate, and where pursuant to and in reliance on said agreement the son moves upon the land, establishes his home thereon, farms the same, and erects relatively valuable, substantial, and permanent improvements but makes no payments, at the death of the father such agreement will be held valid and enforceable as against the executrix of the father's estate and the devisees under his will though no provision is contained therein for the carrying out of such agreement.

In State of North Dakota, vs. Joseph J. Myres.

That in a prosecution for homicide wherein it is alleged death ensued some time after the administration of a blow by the defendant the natural and spontaneous exclamations by the deceased showing present pain and suffering and not a narration of past events are proper subjects for the consideration of the jury, even though not made in the presence of the accused, and may be stated by any competent person who is in a position to know.

That the history of the case as related by the deceased to a physician whom he consulted for the purpose of treatment, detailing his condition, ills, pains, and symptoms arising from an injury caused by violence, necessary to enable the physician to prescribe, and which relate to the present existing pain or malady, is competent evidence for the jury to enable the latter to determine the

basis for the physician's opinion as to the nature of the malady and the cause of death. Such opinion of the expert may be based partially upon such history of the case as related by the patient, provided the history is detailed to the jury so that the jury may know the entire basis upon which the expert found his opinion.

That in a prosecution for homicide the State is required to prove beyond a reasonable doubt that the defendant caused the death, and where it is claimed by that State that the death was the result of a blow administered by the defendant the State may prove this by testimony which excludes every other reasonable hypotheses as to the cause of death, the same as any other fact may be proved.

In The Federal Land Bank of St. Paul, a body corporate, vs. Carl J. Johnson, as County Treasurer, LaMoure County, North Dakota, and the State of North Dakota, doing business as Hail Insurance Department.

That Courts will not determine constitutional questions abstractly or in a hypothetical case; nor will they anticipate a question of constitutional law in advance of the necessity of deciding it. It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially by the application or enforcement of a statute, that its validity may be called in question by a suitor, and determined by an exercise of the judicial power. (State ex rel Kaufman v. Davis, et al, 59 N. D. 191, 225 N. W. 105).

That under the laws of North Dakota (Chapter 137, Laws 1933) general land taxes may be paid without payment of hail indemnity taxes.

DISTRICT AND COUNTY BAR ASSOCIATION NOTES

It is expected that the Grand Forks, and Cass County Bar Associations will resume monthly and weekly luncheons this month.

The Adams County Bar Association met in sorrowful session this past week, and passed resolutions extolling Brother Fred M. Jackson, and extending sympathy to his family. A copy has been received by our association.

The annual meeting of the Sixth District Bar Association planned to be held at Hettinger this month probably won't be held until the forepart of October.

The annual meeting of the Stark County Bar Association will be held at Dickinson sometime in the month of October. This association includes as members attorneys from Billings and Golden Valley Counties.

District and County Bar Associations please take notice that the receipt of notes on your activities will be printed in this column; and will be absolute proof that you are still alive.